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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/654,312 | 09/03/2003 | John H. Davis | 2115 | 4420 |
| 7590 | 06/29/2004 | | EXAMINER | |
| OLIVER D. OLSON OLSON & OLSON 2400 S.W. 4th Avenue Portland, OR 97201 | | | VALENTI, ANDREA M | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3643 | |

DATE MAILED: 06/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|-------------------|----------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 10/654,312 | DAVIS, JOHN H. |
| | Examiner | Art Unit |
| | Andrea M. Valenti | 3643 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 26 April 2004.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 6-8 is/are allowed.
- 6) Claim(s) 1,2 and 5 is/are rejected.
- 7) Claim(s) 3 and 4 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date: _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,522,177 to Davis in view of U.S. Patent No. 4,920,592 to Scott.

Regarding Claim 1, Davis teaches a Christmas tree stand having a base Davis #10) member, a tree-supporting post (Davis #12b) mounted on the base member and extending upwardly therefrom, a screw crank mounting opening (Davis #38) in the upper end portion of the post, and a freely detachable screw crank member (Davis #42) having a screw thread section (Davis #40) at one end, an enlarged abutment adjacent the screw thread section (Davis #44), and a hand crank at the opposite end, the screw thread section being insertable sidably through said opening in the post for threaded insertion into the side of a tree trunk (Davis T and Fig. 2).

Davis is silent on the combination therewith of screw crank securing means on the base member for releasably securing the detached screw crank member to the base member for storage when not in use and affording stacking of multiple tree stands for storage and shipment. However, Scott teaches a crank securing means for a crank not in use (Scott Fig. 10 #210). It would have been obvious to one of ordinary skill in the art

to modify the teachings of Davis with the teachings of Scott at the time of the invention for efficient storage as taught by Scott (Scott Col. 2 line 5-25).

Regarding Claim 2, Davis as modified teaches the screw crank securing means includes a socket member (Scott #320) secured to the base member and configured to removably receive freely therein the screw thread section of the screw crank member, and a clip (Scott #250, 252) member secured to the base member and configured to releasably receive a portion of the screw crank member intermediate the screw thread section and the hand crank end thereof for releasably securing the screw crank member to the base member for storage and stacking.

Regarding Claim 5, Davis as modified teaches the screw crank member is bent intermediate the screw thread end and the handle end (Davis Fig. 2), the bend including an outwardly projecting arcuate portion defining an anvil (Davis Fig. 2 the portion that figure #42 is pointing towards) aligned with the screw thread for striking by a hammer to set the screw thread into the side of a tree trunk.

Allowable Subject Matter

Claims 6-8 are allowed.

Claims 3 and 4 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed 26 April 2004 have been fully considered but they are not persuasive.

In response to applicant's argument that the teachings of Scott is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Scott is pertinent to the particular problem of securing a crank element device to an apparatus when not in use.

Examiner maintains that element #310 of Scott does function to removably receive freely therein a screw threaded section of a crank member.

Examiner maintains that applicant's amendment to claim 5 can be broadly interpreted and does not patentably distinguish over the teachings of the cited prior art. The statement 'outwardly projecting arcuate portion' is relative and the identified portion of Davis element #42 is outwardly projecting in relation to the tree stand and has an arcuate portion as discussed above in the rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

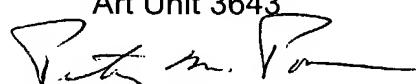
mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 703-305-3010. The examiner can normally be reached on 7:30am-5pm M-F; Alternating Fridays Off. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

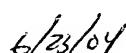
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Andrea M. Valenti
Examiner
Art Unit 3643



Peter M. Poon
Supervisory Patent Examiner
Technology Center 3600



6/23/04

22 June 2004